

Chapter 2**General Notice Requirements**

Counsel are cautioned that in addition to the notice requirements in this chapter, other notice requirements may be contained in the Rules pertaining to the particular subject matter, as well as the Probate Code.

RULE 602.01 REQUIREMENT OF DIRECT NOTICE

Except as otherwise provided in these Rules and the Probate Code, notice must be mailed individually and directly to the residence of the person entitled to notice. If the person does not have a residence address, then to the person's mailing address.

In all instances where notice is mailed to an address other than the person's residence, the court will require a verified statement from the petitioner which explains why such other address was used. Generally, mailed notice to a person "in care of" a second person will not be sufficient unless the person entitled to notice is an adult and has directed the petitioner in writing to send the notice in care of the second person. A copy of the written direction should be filed. In the case of notice to a deceased heir or devisee, see Rule 603.04.

RULE 602.02 ADDITIONAL NOTICE REQUIREMENTS

Under Probate Code Section 1202, the court may require additional notice in any matter. Ordinarily, the court will require notice to be given to a person whenever it appears that the interests of that person may be adversely affected by the determination of an issue raised by the pleadings. For example, in a proceeding where the status of property is to be determined, notice should be given to all persons who would be affected.

RULE 602.03 NOTICE TO MINORS

When a minor is entitled to mailed notice, the giving of notice to the parent of such minor is insufficient. The court requires the notice to a minor to be addressed to the minor and mailed individually, directly to the minor. Notice to a minor mailed to the minor "in care of" a parent is insufficient. (Estate of Lacy (1975) 54 Cal.App.3d 172.)

RULE 602.04 NOTICE TO GUARDIANS AND CONSERVATORS

When a guardian or conservator has been appointed for the person entitled to notice, the court requires that notice be given directly to the conservator or guardian, in addition to direct notice to the conservatee or ward. However, with regard to any process, notice or court order concerning a decedent's estate, when a guardian or conservator who resides in California has been appointed for the person entitled to notice, personal service on the guardian or conservator of any process, notice or court order concerning a decedent's estate is sufficient. In such instances, the guardian or conservator may appear and waive any process, notice or order.

RULE 602.05 NOTICE TO PERSONS WHOSE CURRENT ADDRESSES ARE UNKNOWN

The court will require a declaration of diligent search for each heir or devisee whose current address is unknown in all of the following proceedings:

- A. Petitions for Letters of Administration (P.C. 8000 et seq.)
- B. Petitions for Probate of Will and Letters Testamentary (P.C. 8000 et seq.)
- C. Spousal Property Petitions (P.C. 13650 et seq.)
- D. Petitions for Court Orders Determining Succession to Real Property (P.C. 13150 et seq.)
- E. Petitions to Set Aside Small Estates (P.C. 6600 et seq.)
- F. Final Accounts which request distribution to the County Treasurer for distributee who cannot be found (P.C. 11850 et seq.)

Before appointing a conservator (other than a temporary conservator), the court will require a declaration of diligent search for the spouse and adult children of the proposed conservatee whose addresses are unknown. If the proposed conservatee does not have a spouse or adult children, the court will require a declaration of diligent search for the parents whose addresses are unknown.

Before appointing a guardian (other than a temporary guardian), the court will require a declaration of diligent search for the parents and grandparents whose addresses are unknown.

The declaration of diligent search should state the name of the person whose address is unknown, the last known address of the person, the approximate date when the person was last known to reside there, and the efforts made to locate the person. The statement of efforts to locate the person generally will include in detail the following:

- A. Attempts to learn the person's location or address by inquiry of relatives, friends, acquaintances and employer;
- B. Review of appropriate city and telephone directories;
- C. Review of the voter's register;
- D. Review of real and personal property tax indexes in the Assessor's Office near the person's last known location;
- E. Review of personal papers, particularly address books, Christmas card lists and the like;
- F. Other facts which explain why an address cannot be obtained.

If a person is entitled to notice and that person cannot be located after diligent search, the court requires that notice be sent to the person at the last known address with a request that it be forwarded if the person resided there within six months of filing of the petition. The court will ordinarily dispense with notice at the time of hearing as to that person if the person resided at the last known address more than six months before the petition was filed. Request to dispense with notice should be included in the petition. If the court dispenses with notice, the order should specifically so state.

If the court requires other notice to the person whose address is unknown as provided in Probate Code Section 1212, the notice requirement and manner of notice will be specified in the court's minute order at the time of hearing and the matter continued so that notice can be given.

RULE 602.06 NOTICE TO TRUST BENEFICIARIES

If a personal representative presents an account or petition that affects the interest of a beneficiary of a trust, and the representative is either named to act or acting as the sole trustee, then the court will require notice to the beneficiaries as required by Probate Code Section 1208. In addition, the notice should be accompanied by a copy of the petition or account. If the petitioner in a petition to determine succession to real property or spousal property petition is also the trustee of a trust that is a devisee under the will, notice of the petition must be given to the trust beneficiaries pursuant to Probate Code Sections 13152(a)(7) and 13655(b)(2), respectively. In addition, the notice should be accompanied by a copy of the petition.

In appropriate circumstances the Court may require the appointment of and notice to a guardian ad litem for potential beneficiaries if their interests might diverge significantly from those of the beneficiaries who are in being.

RULE 602.07 NOTICE OF AMENDMENTS AND AMENDED PLEADINGS

The attention of attorneys is called to Rule 327(b) of California Rules of Court, as adopted by the Judicial Council, which reads as follows:

"An amendment to a pleading shall designate the pages and lines of the pleading being amended. An amendment shall not be made by alterations on the face of a pleading except by permission of the court. All alterations shall be initialed by the court or clerk."

An amended petition or an amendment to a petition, as distinguished from a supplement, requires the same notice as the petition which it amends.

An amended petition or an amendment to a petition should be set for hearing on the same date as the original petition to which it relates. If the original petition has been set for hearing or continued to a different date from the hearing date given to the amendment or amended petition, counsel should arrange for the pleading which is to be heard first to be continued to the later hearing date so that they both can be heard together.

RULE 602.08 NOTICE WHEN COMPENSATION REQUESTED FOR EXTRAORDINARY SERVICES

In every case in which there is a request for compensation for extraordinary services totaling in excess of \$1,000.00, the notice must include, in addition to the time and place of hearing, a summary of the matters to be determined, including a statement of the amount of compensation requested for extraordinary services; or, alternatively, a copy of the petition must be served with the notice. If a copy of the petition is served with the notice, the proof of such service should contain an allegation to that effect, but a copy of the petition should not be attached to the original proof of service which is filed with the court.

RULE 602.09 NOTICE OF PETITIONS AFFECTING INHERITANCE TAX

For estates of decedents dying before June 8, 1982, in every instance in which a petition is filed which, if granted, could possibly affect the inheritance tax paid or to be paid, notice of the hearing and a copy of the petition must be given to the State Controller.